IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1299 OF 2005

Subhash Korga Shetty. ... Petitioner
Versus.
State of Maharashtra & others. ... Respondents.

Shri Shashikant Bhatt with Shri Ravindra Sharma for the Petitioner.

Ms.Sangeeta Shinde, A.P.P. for the Respondent-State.

CORAM : ABHAY S. OKA, J.

DATED : 6th June, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Petitioner and the learned A.P.P. for the State. The challenge in this petition is to the showcause notice issued under section 111 of the Code of Criminal Procedure, 1973, calling upon the Petitioner to showcause as to why action under sections 107 and 117 of the said Code should not be taken against the Petitioner.

2. The learned Counsel appearing for the Petitioner submitted that there is no assertion in the showcause notice that the Petitioner was responsible for the breach of peace and tranquillity of the area and that unless he was proceeded against under Chapter proceedings, peace cannot be restored in the society. He has placed reliance on a decision of this Court

reported in 2002 (3) LJSOFT page 22 (Javed Hasan Sanghe v/s. State of Maharashtra & others.).

3. The learned A.P.P. has opposed the Petition by contending that the challenge is only to the showcause notice and the Petitioner could have filed a reply and contested the showcause notice.

4. I have considered the rival submissions. The decision of this Court in the case Javed Hasan (supra) relied upon by the learned Counsel for the Petitioner holds that normally writ petition will not lie for challenging a showcause notice. Considering the assertions made in the notice which was the subject matter of challenge before this Court, this Court interfered with the showcause notice in the said decision.

5. In the present case, the dispute between the parties appears to be based on leave and licence agreements which are annexed to the petition. The Petitioner has not filed a reply to the showcause notice. The learned Counsel appearing for the Petitioner pointed out that though on 21st April 2005 the concerned officer was present in his office, on subsequent dates he was not available.

6. As the challenge in the petition is to the showcause

notice, I am not inclined to entertain the petition. However, considering the peculiar facts of the case, it will have to be directed that if any adverse order is passed by the concerned officer, the same shall not be acted upon for a period of two weeks from the date of communication of the said order to the Petitioner. It will be open for the Petitioner to file a reply to the showcause notice within a period of three weeks from today.

7. Hence the following order is passed:

(i) Writ Petition is rejected with no order as to costs.

(ii) It will be open for the Petitioner to file reply to the impugned showcause notice within a period of three weeks from today.

(iii) The concerned Officer will not pass any order on the basis of the impugned show cause notice within the period of three weeks from today to enable the Petitioner to file a reply.

(iv) In case the order passed by the concerned officer on the basis of the impugned showcause notice is adverse to the

Petitioner, the same shall not be implemented for a period of two weeks from the date of communication of the said order to the Petitioner.

(v) All questions on merits are expressly kept open.

(vi) The parties to act on authenticated copy of this order.

Judge.